IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2871 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PRANLAL SHIVLAL TIWARI @ BABABHAI

Versus

DISTRICT MAGISTRATE PORBANDAR

Appearance:

1. Special Civil Application No. 2871 of 2002

MISS KC THAKKAR FOR MR YOGESH S LAKHANI for Petitioner No. 1

MR SJ DAVE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 02/05/2002

ORAL JUDGEMENT

The petitioner has been detained under the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as `the Act of 1985') by the order dated 24-12-2001 passed by the District Magistrate, Porbandar and he has been branded as

"property grabber" under the Act.

2. It is now well settled that unless the activities of a person as property grabber has disturbed the maintenance of public order, he cannot be detained under the Act.

3. Heard learned advocate for the petitioner, Miss K.C.Thakkar for Mr.Y.S.Lakhani and learned AGP for the State, Mr.S.J.Dave. Also perused the material on record. It is submitted by the learned advocate for the applicant that impugned order of detention was passed on 24-12-2001, but the petitioner was actually detained on 25-12-2001. She has raised various contentions in the petition. However, at the time of arguments, she has restricted on the point of delay in deciding the representation. According to her, the detenu has submitted a representation by R.P.A.D. through nephew to the authority on 28-1-2002 and though it was received by the authority, same has not been decided till 11-2-2002 and, therefore, there is a delay in considering the representation. Learned AGP has fairly admitted the same.

4. It has been held by the Apex Court in a case of Kundanbhai Dulabhai Shaikh Vs. District Magistrate, Ahmedabad and Ors. reported 1996(3) G.L.R. 314 more particularly at head note (B) as under:

> "Constitution of India, 1950 - Art.22(5) Prevention of Blackmarketing & Maintenance of Supplies of Essential Commodities Act, 1980 (VI of 1980) - Sec.8 - Representation of detenu must be disposed of expeditiously - If delay is not satisfactorily explained detention order would be fatally affected."

5. In the present case, it appears that the detenu has sent the representation on 28-1-2002 through nephew to the authority and though said representation has been received by the authority, same was not decided till 11-2-2002 and hence, there is a delay in deciding the representation. No cogent and convincing reasons have been putforward by the authority explaining satisfactorily the delay caused in considering the representation.

6. Since no explanation has been putforth by the said authority for not deciding the representation till 11-2-2002, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner

has tendered a purshis signed by the petitioner which is ordered to be taken on record.

7. The petition is allowed. The impugned order of detention dated 24-12-2001 passed against the detenu is hereby quashed and set aside. The detenu Pranlal Shivlal Tiwari @ Bababhai is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. Direct service is permitted. Yadi to be sent to Sabarmati Central Jail.

(R.P.DHOLAKIA,J.)

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